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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,797	12/08/2005	Angelina Dekker	4662-112	7485
<div>23117 7590 01/15/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203</div>				
			EXAMINER GITOMER, RALPH J	
			ART UNIT 1657	PAPER NUMBER
			MAIL DATE 01/15/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/559,797	Applicant(s) DEKKER ET AL.	
	Examiner Ralph Gitomer	Art Unit 1657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 4-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's election without traverse of Group I, claims 1-3, in the reply filed on 11/2/07 is acknowledged.

A reading of the specification reveals the present invention may be directed to performing the Delvotest with bromthymol blue instead of the conventional pH indicator bromocresol purple.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Reinhartz.

Reinhartz (EP 0 418 113) entitled "Microbiological Assay Kit and Method for Detecting Antibacterial Compounds" teaches on page 2 lines 16-19, the Delvotest for detecting penicillin G in milk. On page 3 lines 27 either bromocresol purple or bromocresol blue can be used in an assay to detect penicillin G in milk.

All the features of the claims are taught by the above reference for the same function as claimed.

Claims 1-2 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for bromthymol blue, does not reasonably provide enablement for the plethora of compounds as claimed. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

The entire scope of the claims has not been enabled because:

1. Quantity of experimentation necessary would be undue because of the large proportion of inoperative compounds claimed.
2. Amount of direction or guidance presented is insufficient to predict which substances encompassed by the claims would work.
3. Presence of working examples are only for a single specific substance and extension to other compounds has not been specifically taught or suggested.
4. The nature of the invention is complex and unpredictable.
5. State of the prior art indicates that most related substances are not effective for the claimed functions.
6. Level of predictability of the art is very unpredictable.
7. Breadth of the claims encompasses an innumerable number of compounds.
8. The level of one of ordinary skill in this art is variable.

In re Wands, 858 F.2d 731, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

There are many instances of lack of antecedent basis in the claims, for example in claim 1 line 1, "the determination" and "the presence". In claim 1 "at least one substance that provides a solid state" reads on a volcano to a snow storm. In claim 1 "characterized in that" may be intended to be "wherein". The preferred spelling is "bromthymol".

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The abstract of the disclosure is objected to because it is not directed to the presently elected invention. Correction is required. See MPEP § 608.01(b).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Langeveld (2006/0134725) may be a related patent.

Langeveld (6,867,015) teaches detecting antibiotics.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (571) 272-0916. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on (571) 272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ralph Gitomer
Primary Examiner
Art Unit 1657